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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/469,494 01/04/00 DAVIS

L 076565-0115

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QM32/0626

EXAMINER

HIRSCH, P

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 06/26/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/469,494

Applicant(s)
Davis et al

Examiner
Paul Hirsch

Group Art Unit
3732



☒ Responsive to communication(s) filed on Dec 21, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-38 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-38 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). two

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Reissue Applications

1. This reissue application was filed without the required offer to surrender the original patent or, if the original is lost or inaccessible, an affidavit or declaration to that effect. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.
2. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.
3. The reissue oath/declaration filed with this application is defective because the error which is relied upon to support the reissue application is not an error upon which a reissue can be based. See 37 CFR 1.175(a)(1) and MPEP § 1414.
 - A. The Declaration states that the error being relied on is that while a living hinge is supported, "Claims 1-20 of the '486 patent do not appear to explicitly recite "a hinge". However, claim 7 explicitly claims a living hinge between the first piece and second piece as referencing the cover piece having a first interface, and the base piece having a second interface.

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B. Accordingly, the error referred to is clearly not an error since it is recited in the claims of the patent and does not constitute proper grounds for a reissue.

4. Claims 1-38 are rejected as being based upon a defective reissue Declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Claim Rejections - 35 USC § 112

5. Claims 11-12, 27-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. Claim 11, line 1, "the peripheral wall" lacks clear antecedence basis.

B. Claim 27, line 2, lacks proper antecedence basis for "the cover".

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who

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has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

7. Claims 1-3, 8, 14-15, 18-20, 22-23, 35 and 37-38 are rejected under 35 U.S.C. 102(a,e) as being anticipated by Sheffler et al. Sheffler et al teaches apparatus as recited by the claims including a grooved annular system by which an hermetic seal is accomplished.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4-7, 21, 24-32, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheffler et al. Dimensioning of the walls where no new or unexpected result occurs as well as shape of the container are considered matters of obvious design well known to the art. In regard to claims 5-6, the flexible nature of Sheffler et al allows for the hermetic seal regardless of content and is the full equivalent of the functional result as recited by the claims. In regard to claim 25 the specific cooperation and location of the rim and sealing channel relative to the cover and/or base is considered a matter of obvious design choice. The term cover is considered a relative term.

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10. Claims 9-13, 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheffler et al in view of Contreras Sr.(4454889). The snap action of Sheffler et al of the hinge would inherently include a sound upon opening or closing but would also be obvious in view of Contreras Sr. which teaches snap action upon closure of the seal.

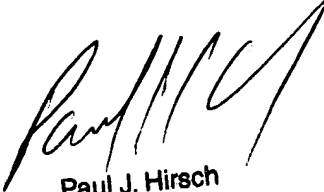
11. Claims 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheffler et al in view of Seidler et al. Adaptation of Sheffler et al to include a housing would be obvious from Seidler et al for refill capability.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Primary Examiner Paul Hirsch whose telephone number is (703) 308-2697.

13. B-E are cited as further teachings of compact design cases.

pjh

June 16, 2000



Paul J. Hirsch
Primary Examiner